

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
300 CAPITOL MALL, 17<sup>TH</sup> FLOOR  
SACRAMENTO, CALIFORNIA 95814

RH05047633

September 7, 2006

PROPOSED TEXT

REPEALS

CALIFORNIA CODE OF REGULATIONS, TITLE 10,  
CHAPTER 5, SUBCHAPTER 7, ARTICLES 8 AND 9 (attached)

ADDS

CALIFORNIA CODE OF REGULATIONS, TITLE 10  
CHAPTER 5, SUBCHAPTER 1, ARTICLE 5.7

ARTICLE 5.7 PRODUCER LICENSING BACKGROUND REVIEW GUIDELINES

Add California Code of Regulations, Title 10, Chapter 5, Subchapter 1, Article 5.7 as follows:

<u>Section 2183</u>	<u>Authority and Purpose</u>
<u>Section 2183.1</u>	<u>Applicability</u>
<u>Section 2183.2</u>	<u>Substantial Relationship Criteria for Crimes or Wrongful Acts</u>
<u>Section 2183.3</u>	<u>Weight of Substantially Related Acts</u>
<u>Section 2183.4</u>	<u>Criteria for Evaluating Rehabilitation</u>

§2183 Authority and Purpose.

These regulations are promulgated pursuant to the authority granted the Commissioner under the provisions of Section 12921(a) of the Insurance Code. The purpose of these regulations is to set forth licensing background review guidelines for use in determining the denial, suspension, revocation, and/or restriction of an insurance producer license or license application.

NOTE

Authority cited: Section 12921(a), Insurance Code. Reference: Sections 1668, 1668.1, 1668.5, 1669, 1738, 1742, 1743, 1805, 1806, 1807, 14026.5, 14028, 14028.5, 14061, 14061.5, 15011, 15018, 15018.5, 15039, 15029.5, Insurance Code.

### **§2183.1      Applicability.**

The producer licensing background review guidelines described in Sections 2183, 2183.1, 2183.2, 2183.3, and 2183.4 shall apply to all persons who possess, or who have applied for, any insurance producer license governed by the Insurance Code, including, but not limited to agent, broker, solicitor, bail agent, bail solicitor, adjuster, or any other producer license.

#### **NOTE**

Authority cited: Section 12921(a), Insurance Code. Reference: Sections 1668, 1668.1, 1668.5, 1669, 1738, 1742, 1743, 1805, 1806, 1807, 14026.5, 14028, 14028.5, 14061, 14061.5, 15011, 15018, 15018.5, 15039, 15029.5, Insurance Code.

### **§2183.2      Substantial Relationship Criteria for Crimes or Wrongful Acts.**

For purposes of denial, suspension, revocation, and/or restriction of a license or license application, in addition to matters specifically mentioned by statute as grounds, a crime or act that is substantially related to the qualifications, functions or duties of an insurance licensee includes, but is not limited to, the following:

- (a) Any felony;
- (b) A misdemeanor which evidences present or potential unfitness to perform the functions authorized by the license in the manner consistent with the public health, safety, and welfare, including but not limited to, soliciting, attempting, or committing crimes involving the following:
  - (1) Dishonesty or fraud;
  - (2) Any conviction arising out of acts performed in the business of insurance or any other licensed business or profession;
  - (3) Theft;
  - (4) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct or convictions, or which requires registration pursuant to the provisions of Section 290 of the Penal Code;
  - (5) Resisting, delaying, or obstructing a public officer in violation of Penal Code Section 148;
  - (6) Any act or offense wherein the person willfully causes injury to the person or property of another;
  - (7) Violation of a relation of trust or confidence, or a breach of fiduciary duty;
  - (8) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(c) Any act which demonstrates a willful attempt to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments, or levies duly imposed upon the licensee or applicant by federal, state or local government or a willful failure to comply with a court order.

**NOTE**

Authority cited: Section 12921(a), Insurance Code. Reference: Sections 1668, 1668.1, 1668.5, 1669, 1738, 1742, 1743, 1805, 1806, 1807, 14026.5, 14028, 14028.5, 14061, 14061.5, 15011, 15018, 15018.5, 15039, 15029.5, Insurance Code.

**§2183.3 Weight of Substantially Related Acts.**

In considering discipline of a license or license application, the weight to be accorded to a substantially related crime or act described in Section 2183.2 (a), (b), or (c) may be determined by the application of guidelines including, but not limited to, the following:

- (a) The extent to which the particular act or omission has adversely affected other person(s) or victim(s), including but not limited to, insurers, clients, employers or other persons, and the probability such adverse effects will continue;
- (b) The recency or remoteness in time of the act, misconduct, or omission;
- (c) The type of license applied for or held by the licensee or applicant involved;
- (d) The extenuating or aggravating circumstances surrounding the act, misconduct, or omission;
- (e) Whether the licensee or applicant has a history of prior license discipline, particularly where the prior discipline is for the same or similar type of conduct.

**NOTE**

Authority cited: Section 12921(a), Insurance Code. Reference: Sections 1668, 1668.1, 1668.5, 1669, 1738, 1742, 1743, 1805, 1806, 1807, 14026.5, 14028, 14028.5, 14061, 14061.5, 15011, 15018, 15018.5, 15039, 15029.5, Insurance Code.

**§2183.4 Criteria for Evaluating Rehabilitation.**

The Commissioner may consider all of the evidence presented, including evidence offered by the licensee or applicant, to determine whether the licensee or applicant has sufficiently rehabilitated from the prior act, misconduct, or omission such that the licensee or applicant is fit to hold an insurance license. When evaluating the rehabilitation of an applicant for an insurance license, or when considering the suspension, revocation, and/or restriction of an insurance license, on the grounds of conviction of a crime or the commission of some other wrongful act, the Commissioner may consider criteria, including, but not limited to, the following:

- (a) Nature and severity of the act, misconduct, or omission;
- (b) Total criminal record;

(c) The time that has elapsed since commission of the act, misconduct, or omission; however, the mere passage of time without unlawful or wrongful activity is not alone sufficient to establish rehabilitation;

(d) Whether the licensee or applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or applicant; however, termination of probation or parole or obtaining a Penal Code Section 1203.4 expungement of the conviction, or other comparable orders of a court, including federal courts, are not alone sufficient evidence of rehabilitation;

(e) Whether the licensee or applicant has made any restitution or done anything to recompense the injured party or to alleviate the wrong or damage caused by the act, misconduct, or omission;

(f) Significant and/or conscientious involvement in community or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

#### NOTE

Authority cited: Section 12921(a), Insurance Code. Reference: Sections 1668, 1668.1, 1668.5, 1669, 1738, 1742, 1743, 1805, 1806, 1807, 14026.5, 14028, 14028.5, 14061, 14061.5, 15011, 15018, 15018.5, 15039, 15029.5, Insurance Code.

by Section 14044 will be impractical due to the limited area or surface available.

NOTE: Authority cited: Section 14044, Insurance Code. Reference: Section 14044, Insurance Code.

## Article 8. Substantial Relationship Criteria for Crimes of Wrongful Acts

### § 2691.18. Substantial Relationship Criteria.

For purposes of denial, suspension, or revocation of the license of an insurance adjuster, in addition to matters specifically mentioned by statute as grounds, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of an insurance adjuster if it is:

- (a) Any felony;
- (b) A misdemeanor which evidences present or potential unfitness to perform the functions authorized by the license in the manner consistent with the public health, safety, and welfare, including but not limited to, soliciting, attempting, or committing crimes involving the following:
  - (1) Dishonesty or fraud;
  - (2) Any conviction arising out of acts performed in the business of an insurance adjuster or any other licensed business or profession;
  - (3) Theft;
  - (4) Annoying or molesting a child under the age of 18 in violation of Penal Code Section 647 (a) or (b);
  - (5) Resisting, delaying, or obstructing a public officer in violation of Penal Code Section 148;
  - (6) Any act or offense wherein the person willfully causes injury to the person or property of another.

NOTE: Authority cited: Section 14013, Insurance Code. Reference: Sections 14025, 14028 and 14061, Insurance Code.

## Article 9. Criteria for Evaluating Rehabilitation

### § 2691.19. Evaluation of Rehabilitation.

When evaluating the rehabilitation of an applicant for an insurance adjuster license, or when considering the suspension or revocation of an insurance adjuster license, on the grounds of conviction of a crime or the commission of some other wrongful act, the Commissioner will consider the following criteria.

- (1) Nature and severity of each act or offense.
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act or offense; however, the mere passage of time without unlawful or wrongful activity is not alone sufficient to establish rehabilitation.
- (4) Whether the applicant or licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant or licensee; however, termination of probation or parole or obtaining a Penal Code Section 1203.4 expungement of the conviction are not alone sufficient evidence of rehabilitation.
- (5) Whether the person has made any restitution or done anything to recompense the injured party or to alleviate the wrong or damage caused by the crime or wrongful act.

The Commissioner will consider all of the evidence presented including evidence offered by the applicant or licensee, to determine whether the applicant or licensee has been transformed from the type of person prior acts show the person to have been, into the type of person one should be to hold the license, to wit: one whose knowledge, competence, integrity, trustworthiness and honesty are such as to merit the placement of trust and confidence.

NOTE: Authority cited: Section 14013, Insurance Code. Reference: Sections 14028 (a), 14029 (b) (2), 14035, 14061 (k), Insurance Code; and Sections 480 and 482, Business and Professions Code.